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SERVICE DATE - LATE RELEASE NOVEMBER 15, 1996

SURFACE TRANSPORTATION BOARD¹

DECISION

No. 40131 (Sub-No. 1)

ASHLEY CREEK PHOSPHATE COMPANY
v.
CHEVRON PIPE LINE COMPANY, ET AL.

No. 40810

ASHLEY CREEK PHOSPHATE COMPANY
v.
SF PHOSPHATES LIMITED COMPANY, ET AL.

Decided: November 13, 1996

In these complaint proceedings, Ashley Creek Phosphate Company (Ashley Creek) alleged that Chevron Pipe Line Company, et al., and SF Phosphates Limited Company, et al., acted unlawfully by establishing unreasonable and discriminatory rates and practices for the transportation of phosphate slurry through a pipeline between Vernal, UT, and Rock Springs, WY. The proceeding was brought before the ICC on referral from the U.S. District Court for the District of Utah, Central Division, in Ashley Creek Phosphate Company v. Chevron U.S.A., Inc., No. 89-C554-S (referral order dated September 21, 1989).

In a decision served October 30, 1996, the Board found that the assailed tariffs were unreasonable at various volume levels. The Board discontinued the proceeding and served a copy of the decision on the referring court.

By petition filed November 7, 1996, defendant Chevron Pipe Line Company (Chevron) requests a temporary stay of the effectiveness of the Board's decision and an extension of time to December 20, 1996, to file a petition to reopen. In support of its requests, counsel for Chevron cites involvement in a complex oil pipeline rate proceeding before the Federal Energy Regulatory Commission and the need to devote serious attention to the preparation of a petition to reopen this proceeding. Ashley Creek filed a reply, asking us to deny the stay and the request for an extension of time.

The petition will be denied. The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits on appeal; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958). The party seeking stay or injunctive relief carries the burden of persuasion on all of the elements required for extraordinary relief such as a stay. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

Here, Chevron has not addressed the above standards or presented any other support for its stay request. In any event, as the Board's decision does not order defendant either to take or to refrain from taking any specific action, it is unclear why defendant is requesting a stay. If defendant has done so in the belief that a failure to take such action might jeopardize its right to file a petition to reopen, defendant is mistaken.

Nor will we grant the requested extension of time to file a petition for review under 49 CFR 1115-3. The timely filing of such a petition would not stay the Board's order, per subsection 1115.3(f). In any event, because it was issued in response to the court referral, the Board's order was made effective on the date it was issued. Petitioner has not demonstrated that it would be harmed if it failed to file a timely petition under section 1115.3. Ashley Creek, on the other hand, expresses concern that granting the relief sought by Chevron will prejudice its ability to proceed with its court action, in which a hearing is scheduled for November 19, 1996.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 15501. Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

S.B. 40131 (Sub-No. 1) et al.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for stay and for an extension of time to file is denied.
2. T his decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary

